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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1ST TECHNOLOGY LLC, Plaintiff, vs. IQ-LUDORUM, PLC, PLAYTECH CYPRUS, LTD., TILTWARE, LLC, and KOLYMA CORPORATION, A.V.V., Defendants.	Case No.: 2:06-cv-323-LDG-RJJ **DEFENDANT TILTWARE, LLC's MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, FOR TRANSFER OF VENUE**

Pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1404(a), Defendant TiltWare, LLC ("TiltWare") moves the Court to dismiss this case based on improper venue or, in the alternative, to transfer venue to the United States District Court for the Central District of California, Western Division. This motion is supported by the points and authorities set forth below and by the accompanying Declaration of Ian J. Imrich ("Imrich Decl.").

INTRODUCTION

This is a patent infringement action brought by Plaintiff 1st Technology, LLC ("1st Technology"), a California limited liability company, against Defendants TiltWare, a California limited liability company; IQ-Ludorum, PLC ("IQ-Ludorum"), a foreign company located in London, England; Playtech Cyprus, Ltd. ("Playtech Cyprus"), a foreign company located in Cyprus; and Kolyma Corporation ("Kolyma"), a foreign company located in Oranjestad, Aruba. Complaint ("Compl.") ¶¶ 4-8.

1st Technology is the assignee of U.S. patent no. 5,564,001 entitled "Method and System for Interactively Transmitting Multimedia Information Over a Network Which Requires Reduced Bandwidth" ("'001 Patent"). Compl. ¶ 4. 1st Technology's offices are located in Los Gatos, California. Compl. ¶ 4. The inventor of the '001 Patent, Dr. Scott Lewis, resides in Los Gatos, California. Compl. ¶ 9.

TiltWare is a California limited liability company with its offices in Los Angeles, California. Imrich Decl. ¶ 2. TiltWare is in the business of developing and licensing software products. Imrich Decl. ¶ 3. While a majority of TiltWare's employees reside in California, none reside in Nevada. Id. ¶ 3. TiltWare has not made, used, sold, offered to sell, licensed, or distributed its software products to any person or entity located in Nevada. Imrich Decl. ¶ 4. TiltWare does not have any offices in Nevada. Id. TiltWare does not have any customers or licensees in Nevada. Id. TiltWare does not transact, and has never transacted, any business in Nevada. Id. TiltWare is not incorporated in Nevada, it does not hold any licenses to conduct business in Nevada, and it has not designated an agent for service of process in Nevada. Id.

The Complaint does not allege that any of the defendants reside in this district. Moreover, the Complaint does not allege that the defendants have a "regular and established place of business in this district." Thus, 1st Technology has failed to establish that venue is proper in the District of Nevada.

However, even assuming *arguendo* that venue is proper in this district, there is a strong basis for the Court to transfer this case to the Western Division of the Central District of California, where 1st Technology and TiltWare are located and where the domestic evidence and witnesses are located. Indeed, as set forth below, none of the parties are located in Nevada. The allegedly infringing conduct could not have taken place in Nevada, because Tiltware does not conduct business in Nevada. The witnesses and evidence are not located in Nevada. Indeed, Nevada has no interest in this case.

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Based on consideration of all of the relevant factors, the Court should dismiss this case for improper venue or, in the alternative, transfer this case to the Western Division of the Central District of California.

ARGUMENT

In the Complaint, 1st Technology cites to two statutes in support of its contention that venue is proper in this district: 28 U.S.C. § 1391(d) and 28 U.S.C. § 1400(b). The first statute states that "[a]n alien may be sued in any district." 28 U.S.C. § 1391(d). This statute provides no basis for venue over TiltWare, the only domestic defendant. The second statute states that:

> Any civil action for patent infringement may be brought in the judicial district [1] where the defendant resides, or [2] where the defendant has committed acts of infringement **and** has a regular and established place of business.

28 U.S.C § 1400(b) (emphasis added). However, as set forth below, 1st Technology has failed to establish that venue is proper in the District of Nevada under 28 U.S.C. § 1400(b). Moreover, even if 1st Technology can establish that venue is proper in the District of Nevada, the Court should transfer the case to the Western Division of the Central District of California, pursuant to 28 U.S.C. § 1404(a) and the doctrine of *forum non conveniens*.

I. 1st TECNOLOGY HAS FAILED TO ESTABLISH THAT VENUE IS PROPER IN THIS JUDICIAL DISTRICT

1st Technology has failed to establish that venue is proper under 28 U.S.C. § 1400(b). 1st Technology does not allege in the Complaint that any of the defendants "reside" in this judicial district. Moreover, TiltWare does not make, use, sell, license, offer for sale or distribute its software products in the District of Nevada. Imrich Decl. ¶ 4. Thus, 1st Technology has failed to establish the first basis for venue in this district under Section 1400(b).

Furthermore, 1st Technology does not allege that TiltWare or the other defendants have a "regular and established place of business" in this judicial district. 28 U.S.C § 1400(b). Thus, 1st Technology has failed to establish the second basis for venue in this district under Section 1400(b).

Accordingly, 1st Technology has failed to establish that venue is proper in this judicial district. As a result, the Court should dismiss this action based on improper venue.

II. IN THE ALTERNATIVE, THE COURT SHOULD TRANSFER THIS CASE TO THE CENTRAL DISTRICT OF CALIFORNIA

Even if the Court finds that venue in this judicial district is proper, the Court should transfer this case to the Western Division of the Central District of California. A court may transfer a case to another district "[f]or the convenience of parties and witnesses, in the interest of justice" if the case "might have been brought" there originally. 28 U.S.C. § 1404(a). In ruling on a motion for to transfer venue, the Court must examine: (1) whether an adequate alternative forum exists, and (2) whether the balance of private and public interest factors favors dismissal. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 n. 22, 257 (1981); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 504 (1947); Ceramic Corp. of America v. Inka Maritime Corp., 1 F.3d 947, 949 (9th Cir. 1993); Lockman Found. v. Evangelical Alliance Mission, 930 F.2d 764, 767 (9th Cir. 1991).

In determining whether to transfer venue, courts consider the following "private interest" factors: (1) the residence of the parties and the witnesses; (2) the forum's convenience to the litigants; (3) access to physical evidence and other sources of proof; (4) whether unwilling witnesses can be compelled to testify; (5) the cost of bringing witnesses to trial; (6) the enforceability of the judgment; and (7) "[a]ll other practical problems that make trial of a case easy, expeditious and inexpensive." Gulf Oil, 330 U.S. at 508; Contact Lumber, 918 F.2d at 1449. Courts also consider the following "public interest" factors: (1) local interest of lawsuit; (2) the court's familiarity with governing law; (3) burden on local courts and juries; (4) congestion in the court; and (5) the costs of resolving a dispute unrelated to this forum. Piper Aircraft, 454 U.S. at 259-61; Gulf Oil, 330 U.S. at 508-09.

A. An Adequate Alternative Forum Exists

An adequate alternative forum exists when the defendant is amenable to service of process in the foreign forum. Piper Aircraft, 454 U.S. at 254 n. 22; Contact Lumber Co. v. P.T. Moges Shipping Co., 918 F.2d 1446, 1449 (9th Cir. 1990). TiltWare is a California limited liability company. Its headquarters are located at 10866 Wilshire Blvd., 4th Floor, Los Angeles, California 90024. Compl. ¶ 7. Thus, TiltWare is subject to service of process in the Central District of California, Western Division, because that is the judicial district where TiltWare has its headquarters. The other defendants – all of which are foreign companies – are subject to venue "in any district." 28 U.S.C. § 1391(d). Accordingly, the Central District of California, Western Division, is, at a minimum, an adequate alternative forum.

B. The Balance of Factors Favors Transfer

The private and public factors weigh in favor of transferring this case to the Central District of California.

1. The Domestic Parties and Witnesses Reside in California

The only domestic parties are located in the Central District of California. Plaintiff 1st Technology is a California limited liability company with its headquarters in Los Gatos, California. Compl. ¶ 4. TiltWare is a California limited liability company with its headquarters in Los Angeles, California. Id. ¶ 7

Similarly, the domestic witnesses are located in Central District of California. "The convenience of the witnesses is often the most important factor considered by the court when deciding a motion to transfer for convenience." Steelcase, Inc. v. Haworth, Inc., 1996 WL 806026 *3 (C.D. Cal. 1996); Geo. F. Martin Co. v. Royal Ins. Co. of America, WL 1125048 (N.D. Cal. 2004) (same). Dr. Lewis, the inventor of the '001

Patent, resides in Los Gatos, California. Compl. ¶ 9. While a majority of the TiltWare employees who develop its software products reside in or around Los Angeles, California, none reside in Nevada. Imrich Decl. ¶ 3. Accordingly, it would be inconvenient for the witnesses if the case proceeded in Las Vegas. Nevada.

2. California is a More Convenient Forum

Both 1st Technology and TiltWare are located in California. It would be inconvenient for 1st Technology and for TiltWare to travel to Nevada to litigate this case. Because of the availability of abundant international flights out of LAX, it would be more convenient for the other defendants (who are located in England, Cyprus and Aruba according to the Complaint) to litigate this case in the Central District of California. Accordingly, the second private interest factor weighs in favor of transfer.

3. The Evidence is Located in California

Because both 1st Technology and TiltWare are located in the Central District of California, physical evidence and other sources of proof will likely be found in California. Indeed, TiltWare's software products are mostly developed in California. Presumably, evidence relating to 1st Technology's '001 Patent is located in California. Accordingly, the third private interest factor weighs in favor of transfer.

4. Unwilling Witnesses Cannot be Compelled to Testify in Nevada

Unwilling witnesses (such as lower level employees of TiltWare) cannot be compelled to travel to Nevada to testify in depositions or at trial. Accordingly, this factor weighs in favor of transferring the case to where the witnesses are located.

5. The Cost of Bringing Witnesses to Trial in Nevada is Higher

It will be more expensive to bring witnesses from California to Nevada than it would if those witnesses testified at trial in Los Angeles, near where they live and work.

6. The Enforceability of the Judgment is Not an Issue

This factor does not weigh in favor of or against transferring the case. Judgments from either the District of Nevada or the Central District of California would be enforceable in California (provided that the judgment from the District of Nevada is properly domesticated in California).

7. Transfer Will Result in an Expeditious and Less Expensive Trial

There is no nexus between this case and the District of Nevada. The domestic parties are in California. The domestic witnesses are in California. The evidence is in California. It would be cheaper and easier to litigate this case where the domestic parties are located.

8. Nevada Has No Interest in this Lawsuit

Nevada has no interest in this case. This is a patent infringement lawsuit filed by a California corporation against a California limited liability company (as well as foreign businesses). The allegedly infringed Claim 26 of the '001 Patent involves an interactive multimedia system for providing interactive multimedia information to a user over a communication network. While most of TiltWare's software products development is in California, none is in Nevada. TiltWare has not licensed or sold any software products to any individual or business located in Nevada. Imrich Decl. ¶ 4.

9. The Court's Familiarity with Governing Law is Neutral

This factor does not weigh against or in favor of transfer. The case involves the application of the Patent Act and interpretive case law. Federal courts in California and Nevada routinely resolve patent infringement lawsuits.

10. The Case Poses an Undue Burden on Local Courts and Juries

Given the lack of any apparent nexus between Nevada and the parties or the software products of TiltWare, it would be unduly burdensome for Nevada courts and Nevada juries to decide this case. In contrast, California has a much greater interest in resolving a patent infringement lawsuit between a California limited liability company, another California limited liability company, and three foreign companies.

11. The Courts in the Alternative Forum are Less Congested

The median time for a civil action to proceed from filing to disposition through the federal courts located in the District of Nevada is 8.9 months. See Exhibit A. The median time for a civil action to proceed from filing to disposition in the Central District of California is only 7.4 months. See Exhibit B. Thus, it takes less time for a civil action to proceed to trial in the Central District of California than it does for a civil action to proceed to trial in the District of Nevada.

12. The Dispute is Unrelated to this Forum

The cost of resolving this dispute in the District of Nevada is not justified given the lack of any nexus between the parties or the alleged infringement and the District of Nevada. Patent cases impose a particular strain on the Courts because of the frequent discovery disputes, the need for a Markman hearing, the complexity of the cases, and the often lengthy trials. Accordingly, the District of Nevada should not bear the cost of resolving this case, when the dispute is unrelated to this forum.

CONCLUSION

For the foregoing reasons, the Court should transfer this case to the United States District Court for the Central District of California, Western Division.

Dated this 31st day of May, 2006.

Respectfully submitted,

LEWIS AND ROCA, LLP

By: /s/

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of LEWIS AND ROCA, LLP. and that on this 31st day of May, 2006, I caused the documents entitled:

DEFENDANT TILTWARE, LLC's MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, FOR TRANSFER OF VENUE,

DECLARATION OF IAN J. IMRICH; and

CERTIFICATE OF SERVICE

to be served electronically via the CM/ECF system to the attorneys listed below:

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